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ATTORNEY FOR TD AUTO FINANCE LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
BRYANT & EVELYN ARTHUR,	§	CASE NO. 19-43691-MXM-7
DEBTORS,	§	
	§	
TD AUTO FINANCE LLC,	§	
MOVANT,	§	A Hearing on the Motion for Relief
	§	from the Automatic Stay or, in the
VS.	§	Alternative, Request for Adequate
	§	Protection set:
BRYANT & EVELYN ARTHUR AND	§	NOVEMBER 14, 2019 AT 9:30 A.M.
JOHN SPICER, TRUSTEE,	§	
RESPONDENTS.	§	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY
OR, IN THE ALTERNATIVE, REQUEST FOR ADEQUATE PROTECTION

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES, TD Auto Finance LLC ("TDAF"), Movant herein, complaining of Bryant & Evelyn Arthur ("Debtors") and John Spicer ("Trustee"), Respondents herein, and for cause of action would respectfully show the Court as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. § 362. This is a core proceeding.
2. TDAF is a secured creditor of the above-referenced Debtors by virtue of a security interest in a 2016 Toyota Camry, Vehicle Identification Number 4T4BF1FK7GR567249.
3. As of October 22, 2019, Debtors herein were indebted to TDAF in the net contractual balance of \$18,790.84. The payments on the account are \$539.39 per month. As of October 22, 2019, the account was due for the September 3, 2019 payment and all payments due since that time. The total arrears as of October 22, 2019 were \$1,592.12.

4. TDAF demands proof of and maintenance of insurance on the vehicle, listing TDAF as loss-payee and otherwise acceptable to TDAF. If the collateral is uninsured, it constitutes cause to terminate the automatic stay.

5. But for the automatic stay, TDAF could and would foreclose its lien on the collateral in which it holds a security interest.

6. TDAF does not have, and neither Debtors nor the Trustee is able to offer, adequate protection of TDAF's interest in the collateral securing TDAF's debt.

7. Debtors and Trustee have no equity in the collateral, and the collateral is not necessary for an effective reorganization.

8. If Debtors elect to retain the collateral, Debtors should be required to either redeem the collateral or reaffirm the debt, with the redemption or reaffirmation to be completed within ten (10) days of the date a hearing on this Motion is set, with a termination of the automatic stay if the Debtors do not comply. 11 U.S.C. § 521(a)(2) provides that Debtors in bankruptcy have three options regarding the collateral. Debtors can surrender the collateral. If Debtors want to retain the collateral, the Debtors can either redeem the collateral or reaffirm the debt secured by the collateral. If Debtors do not perform one of these three options, then the statute provides for termination of the automatic stay.

9. Because the collateral described herein depreciates and may not be insured, any Order either terminating or conditioning the automatic stay should be effective immediately and there should be no stay of the Order for fourteen days after the entry of the Order.

WHEREFORE, PREMISES CONSIDERED, TD Auto Finance LLC prays for:

1. An Order of this Court granting TDAF relief from the automatic stay imposed pursuant to 11 U.S.C. § 362;

2. An Order of this Court authorizing TDAF to take immediate possession of the collateral which is the subject of this Motion and foreclose its lien in the collateral;

3. An Order of this Court requiring Debtors, if Debtors are going to retain the collateral, to reaffirm the debt within fourteen days of the date set for a hearing on this Motion or to redeem the collateral in full within the same time period and providing for a termination of the automatic stay if the Debtors do not comply;

4. In the alternative, an Order of this Court requiring Debtors to provide TDAF with adequate protection of its interest in the collateral;

5. An Order of this Court finding that any Order entered with regard to this Motion should be effective immediately upon its entry and should not be stayed for fourteen days following the entry of said Order; and

6. For such other and further relief, both general and specific, to which TDAF may show itself justly entitled.

Respectfully submitted,
/s/ Stephen G. Wilcox
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NOTICE REGARDING REQUIRED ANSWER

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT ELDON B. MAHON U.S. COURTHOUSE, 501 W. 10TH ST., FORT WORTH, TX 76102-3643 BEFORE CLOSE OF BUSINESS ON NOVEMBER 8, 2019, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that prior to the filing of this Motion, I did the following: My office contacted Debtors’ attorney’s office and was advised there was opposition to the Motion.

/s/ Stephen G. Wilcox
Stephen G. Wilcox

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Relief from the Automatic Stay or, in the Alternative, Request for Adequate Protection was served by FIRST CLASS MAIL, POSTAGE PREPAID on:

Bryant & Evelyn Arthur
1109 Rockcress Drive
Mansfield, TX 76063

and by ELECTRONIC FILING on:

Daniel Wright
Skymark Tower
1521 N. Cooper St., Suite 550
Arlington, TX 76011

John Spicer
Founders Square
900 Jackson St., Suite 560
Dallas, TX 75202-4425

Office of the U.S. Trustee
1100 Commerce, Room 976
Dallas, TX 75242

on October 25, 2019.

/s/ Stephen G. Wilcox
Stephen G. Wilcox

SUMMARY OF EXHIBITS

1. Vehicle Retail Instalment Contract dated May 19, 2016 on a 2016 Toyota Camry, Vehicle Identification Number 4T4BF1FK7GR567249.
2. Lien and Title Information on a 2016 Toyota Camry, Vehicle Identification Number 4T4BF1FK7GR567249.
3. Affidavit of representative of TD Auto Finance, LLC

*Copies of Exhibits are available by written request to:

Kim Raudry
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953-02304-496147